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FM AMEMBASSY BUDAPEST  
TO RUEHC/SECSTATE WASHDC PRIORITY 3937  
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RUCPDO/DEPT OF COMMERCE WASHDC PRIORITY

UNCLAS SECTION 01 OF 02 BUDAPEST 000155

SENSITIVE  
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EEB/TPP/IPE FOR JENNIFER BOGER; COMMERCE FOR ITA/MAC/OIPR  
SILVIA SAVICH, COMMERCE PASS USPTO; STATE PLEASE PASS TO  
USTR FOR JENNIFER CHOE-GROVES

E.O. 12958: N/A  
TAGS: [ECON](#) [ETRD](#) [KIPR](#) [EU](#) [HU](#)  
SUBJECT: HUNGARY: 2009 SPECIAL 301 REPORT POST  
RECOMMENDATIONS

REF: A. SECSTATE 08410  
[1](#)B. 08 BUDAPEST 00179

[1](#)1. (SBU) SUMMARY AND RECOMMENDATION: Hungary continues to make headway on its Special 301 initiatives, as well as IPR regulatory enforcement more broadly. The National Board Against Counterfeiting and Piracy (HENT) -- which acts as an overarching structure for information sharing, police and judicial training, public outreach and public-private cooperation -- made strong progress this past year. While legislation and enforcement efforts are aligned, the continued leniency in the courts hinders progress. Accordingly, Post recommends that Hungary remain on the Watch List; however, we suggest that the report include a caveat that the progress and positive actions of the HENT be noted as a promising move toward eventual removal from the list. END SUMMARY AND RECOMMENDATION.

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THE HENT IS UP AND RUNNING  
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[1](#)2. (SBU) Industry and government representatives alike were enthused about the focus and progress of the HENT, established in January 2008. Several sources stated that the U.S. Embassy's efforts in raising IP protection awareness lead to its establishment. As outlined in reftel B, the HENT is a public-private partnership comprised of 20 permanent members, 10 from government and 10 from industry. In a meeting on February 12, Paulina Oros, from the office of the New Order Project, presented Econoff with a copy of the HENT's two-year strategy and explained its workings. The HENT meets monthly, with the five sub-committees meeting bi-weekly focused on statistics, information/education, pharmaceutical and agricultural, internet services/illegal downloads, and enforcement. The strategy is broken down into these five areas detailing each initiative with a description, needed funding, responsible individual, and a deadline.

[1](#)3. (SBU) Collaborating with electronics store giants, MediaMarkt and Saturn, the HENT launched a large-scale consumer information campaign in late 2008. Warning of the consequences of counterfeit and pirated goods, nearly 600,000 red leaflets were attached to merchandise in 23 outlets. An additional 20,000 stickers were placed on electronic hardware such as computers, DVD burners, and LCD monitors. The campaign includes posters in customer service areas, check out lanes, and bathrooms. In April, the campaign will add a second partner, PhotoHall, a multimedia retail chain, with 75 outlets. So far, the GOH has covered the roughly \$10,000 cost of the program.

[1](#)4. (U) The information campaign was furthered on February 11, when HENT added a new category at the Hungarian music awards

(Fonogram), giving an award for the most legally downloaded album of the year.

15. (SBU) To further the concept of "Software as a Company Asset" among accountants and CFOs, the tax authority sponsored the first IP awareness seminar on February 27. Members from the tax authority discussed software inspections, while representatives from the National Standard Board addressed compliance processes like ISO 19770 and independent licensing specialists.

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IP INFRINGEMENT RIPPLE -- LOCAL INDUSTRY INPUT  
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16. (SBU) According to the Hungarian Patent Office (HPO), Hungary's economy sustained losses of nearly \$500 million due to copyright infringement and piracy in the music, film and software industries - a 50 percent decrease from what industry officially reported in 2005.

17. (SBU) In a meeting on February 11, Andras Kalman, from the local audiovisual association (ASVA), told Econoff that the Motion Picture Association (MPA) canceled the contract for legal representation on IP matters with ASVA that same day. He believed it was because of Hungary's small market. "It could be that the damage isn't worth the focus," he said. MPA representative confirmed that "the move was strictly an economic decision," suggesting a comfort level with the local enforcement authorities to protect their own film markets as well as MPA's. Mr. Kalman echoed both praise for the HENT and frustration with judicial leniency. He recommended

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Hungary remain on the watch list.

18. (SBU) On February 18, Sandor Simonkovics, from the Business Software Alliance (BSA) of Hungary, told Econoff that he expects the software piracy rate to remain unchanged from last year at 42 percent. Though it was a banner year -- BSA trained 500 tax inspectors on software licensing, the GOH included IPR clauses in employee contracts, BSA and the GOH stood up a hotline for tax inspectors and accountants, the Tax Authority is integrating software inspections into their general inspection processes, and GOH and BSA subcontractors now must certify to the legal use of software -- BSA attributes the continued willingness to use pirated software to the economic problems cause by the recent crisis. Adding injury, the GOH decided to re-compete 30 percent of its software contract for public schools with Microsoft. According to Microsoft, the GOH has not yet solicited bids for the 30 percent, but no longer pays the licensing fees to Microsoft. Additionally, smaller electronics stores continue to sell personal computers without software, while clerks offer their "installation services" for a fee.

19. (SBU) On February 18, Andras Vajda, the local PhARMA representative, told Econoff that Hungarian laws on pharmaceutical patent protection is aligned with EU standards and industry needs. However, he explained that judges are focused on protecting national interests, to include earlier introduction of less expensive drugs (generics) for the State-funded health care program. He did not recommend Hungary be placed on the Priority Watch list as their struggle with the GOH is based less on patent protection and more on tax structures. (COMMENT: Post notes that this statement from Hungary-based PhARMA rep differs from the PhARMA assessment submitted in Washington, which continues to call for Hungary's elevation to the Priority Watch List. END COMMENT.)

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ALL CARROTS AND NO STICKS  
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110. (SBU) Sources agreed that Hungarian regulations and laws

on IP are harmonized with the EU directive. Enforcement is carried out by a specialized, internet-savvy unit in the police and customs departments, while IP cases are heard in a special court in Budapest. However, all sources declared that the leniency of the courts mocks positive enforcement efforts. Although, the HPO statistics showed that nearly 28,668 IP investigations were opened in 2008 -- with 75 percent brought to trial -- they failed to reveal the actual fines or jail time. Enforcement relies on goodwill and soft measures, seriously lacking hard consequences. Poised to protect the rights of the individual, the current political climate deadens any strong measures. Court cases show great forgiveness specifically with software and pharmaceutical IP infringements. This leniency emboldens the public. The HPO explained that external training, offered by NGOs, the U.S. Patent Office, and ILEA, is more effective than internal debates.

¶11. (SBU) Last December, Parliament voted down an amendment to the copyright act, which clarified that the private copying exception does not extend to copying from illegal sources. The vote was not based on the grounds that they support internet piracy but rather they argued that the legal language was too vague and placed responsibility on the user's awareness of illegal sources. The HPO and the MOJ view the attempted amendment as "simply a clarification to the copyright act," and both believe internet piracy is covered under the basic law. Additionally, the IT association lobbied against the amendment, seeing it as a first step of stopping the free flow of information on the internet. It is unlikely the amendment will be proposed again this year.

¶12. (SBU) COMMENT: While the GOH has made good progress with the HENT and plans to continue down this path, Post recommends that Hungary remain on the Watch List in 2009. We believe it is important to encourage continued progress in the strengthening of Hungary's IP environment. We will continue to support external training of the judiciary and work closely with the HPO and MOG as well as a broad array of interested industries to offer assistance as appropriate.  
END COMMENT.  
Foley